

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7919 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT and
MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

COSPAR TRADING PVT LTD

Versus

UNION OF INDIA

Appearance:

Mr. G.L. Raol, Ld. Counsel with M/S TRIVEDI & GUPTA for Petitioners
MR AKSHAY H MEHTA for Respondent No. 1
MR MUKESH R SHAH for Respondent No. 2

CORAM : MR.JUSTICE J.N.BHATT and
MR.JUSTICE H.K.RATHOD

Date of decision: 27/10/1999

ORAL JUDGEMENT

Rule, service of which is waived by Mr. Mehta,
the learned counsel for respondent No. 1 and Mr. Shah,
the learned counsel for respondent No. 2.

The petitioner company is engaged in import of various items from foreign countries. The petitioner company entered into a firm contract with M/s. Middle East Industries Dubai for import of 7,500 Mts. + 5% of superior kerosene Oil (SKO). The petitioner Co. got an irrevocable Letter of Credit on finalization of the contract for an amount of US\$ 10,57,500/-. The supplier of the goods requested for extension of date of shipment by about one month i.e. upto 15.8.1999. The supplier insisted for enhancement of contracted price from US\$ 141 per mt. to US\$ 155 per mt. The supplier insisted for enhancement of the contracted price to US\$ 152 per mt.

Therefore, the petitioner Co. had to accede to the request of the supplier and having opened the irrevocable Letter of Credit, the petitioner company was left with no alternative but to accede to the request of the supplier whereby Letter of Credit was amended twice covering an amount of US\$ 12,15,000/-. The supplier shipped the goods from foreign country. The cargo was discharged at Kandla Port which took two days. The Bill of entry for warehousing came to be filed whereafter request for permitting clearance of goods for home consumption/ex-bounding was made which was not accepted. Thereafter, the petitioner company applied for provisional release of the goods under sec.18 of the Customs Act, 1962 and repeated the request, however, in vain. The petitioner Company has, therefore, approached this Court by way of the present petition under Article 226 of the Constitution of India.

The respondent authority served the petitioner company with show cause notice regarding enhancement of the declared value of the goods which were for clearance for home consumption pending adjudication. The authority allowed the home consumption only upto the extent of 50 per cent for home consumption against the PO Bond cum Bank Guarantee for differential duty.

When the matter was called out, our attention was drawn to the statement of fact made in Annexure "K" at page 38 in penalty made paragraph and which was reiterated before us. The petitioner Co. is ready to execute the bond to cover the differential of duty and pay in cash on the declared price and, without prejudice to the above, they are ready to submit the Bank Guarantee of the amount of 20 percent of the differential amount of duty and rest by bond without any bank guarantee as per the requirement of rule of the Customs (Provisional Assessment) 1963.

Now, Mr. Shah, while appearing for the respondent authority, has fairly submitted that since 100 percent bank guarantee is ordered, the release of 100 percent goods would be quite just and reasonable.

In the facts and circumstances of the case, the respondent no. 2 shall permit the clearance of consignment provisional assessment basis on the condition to submit the bank guarantee of the entire amount of the differential amount of duty and payment of admitted duties calculated at the rate of US\$ 162 per mt. and also on condition that the responsible officer of the petitioner company shall extend all helping hands in proceedings pursuant to the show cause notice. The proceedings pending adjudication shall be expeditiously concluded but not later than three months.

In view of the aforesaid discussion and the directions, the petition shall stand disposed of. Rule is made absolute to the aforesaid extent with no order as to costs.

27.10.1999.

Vyas